IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4006 OF 2006.

M/s.Sunderlal Beni Prasad. ... Petitioner.

V/s.

Mr.Bansraj Rajpat Yadav. ... Respondent.

P.N.Anaokar for the petitioner.

G.G.Togni i/b. R.S.Jangi for the respondent.

CORAM: V.C.DAGA, J.

DATED: 14th September 2006.

P.C.:

. Heard learned counsel for the rival parties.

. Perused petition.

2. This petition is directed against the judgment and order dated 14th October, 2005 passed in Application (IDA) No.124/2003 by the Labour Court, Thane while deciding application under section 33C(2) of the Industrial Disputes Act, 1947 ("Act" for short).

3. One of the contentions raised by the petitioner- employer is that there was no

employer-employee relationship between the parties. It is further contended that the application under section 33C(2) was filed after expiry of more than two and half years, hence, application should not have been entertained by the Labour Court. It is further contended that at no point of time respondent- workman had worked with the petitioner- employer muchless beyond the period of one or two days.

4. The contentions raised are absolutely vague; and lacks in material facts and particulars. The same are liable to be outrightly rejected for more than one reason.

5. Reference (IDA) No.78/2003 (between the same parties), vide award dated 19th May, 2005, was partly allowed by the Second Labour Court, Thane. The respondent- workman was held entitled to reinstatement. However, in lieu of reinstatement, petitioner- employer was directed to pay Rs.27,500/- to the respondent- workman. This award has not been challenged by the petitioner. The award became final and conclusive. The said award has been acted upon by the petitioner by making payment. This very piece of evidence in the form of judicial order and acceptance thereof is sufficient to establish

employer-employee relationship between the parties. Thus, contentions raised in this behalf is devoid of any substance and the same is liable to be rejected.

6. So far as claim made by the respondent-workman under section 33C (2) of the Act, *prima facie* material is produced by the respondent to prove his claim. No material is produced by the petitioner- employer to disprove the claim of the respondent- workman even-though onus had shifted on the employer. It was open for the petitioner-employer to produce Daily Wage Register or Daily Muster Roll and/or any other relevant documents to disprove the claim made by the workman. The employer was in possession of these documents which could have thrown light on the controversy. The best piece of evidence to throw light on the controversy and the claim set up under section 33C (2) of the Act was in possession of the employer.

7. The employer cannot be said to be heard of saying; he did not produce the material and documents on record since nobody had asked him to produce the same. The submission made in this

behalf is devoid of any substance in view of the law laid down by Apex Court in the case of **Hiralal v. Badkulal**, AIR 1953 SC 225; wherein the Apex Court has ruled as under:

> Suit for recovery of amount due on basis of adjustment of accounts signed by defendant. Defendant denying correctness of amount found due. Defendant who is in possession of account books kept by him and from which the balance could be ascertained should produce them before Court. He cannot be heard to say, relying upon the abstract doctrine of onus of proof, that it was no part of his duty to produce them unless he was called upon to do so.

The party in possession of the best evidence cannot be allowed to rely on the abstract doctrine of onus of proof. An adverse inference can be drawn against the employer that had he produced these documents, it would not have supported the case of the petitioner- employer. The third contention about delayed filing of the application is also devoid of any substance.

8. The impugned order and findings recorded therein are based on evidence and material on record. The view taken by the Court below is a reasonable and possible view. In exercise of writ

jurisdiction this Court is not expected to reappreciate the evidence unless any perversity in the impugned order is demonstrated. No perversity in the impugned order could be demonstrated by the petitioner.

9. In the result, petition is dismissed in limine with no order as to costs.

(V.C.DAGA, J.)